

Case 4:22-cv-00438-ALM Document 4-5 Filed 05/25/22 Page 1 of 8 PageID #: 257

DERRICK GIBSON
MSGT, U.S. ARMY,

and

STEVEN BROWN
SSG, U.S. ARMY, *et al*, for themselves
and all others similarly situated

Plaintiffs

V.

LLOYD AUSTIN
Secretary of Defense,
U.S. DEPARTMENT OF DEFENSE
Washington, D.C. 20301

and

JANET WOODCOCK,
Acting Commissioner,
U.S. FOOD AND DRUG
ADMINISTRATION

and

XAVIER BECERRA
Secretary of the U.S. Department of
Health and Human Services
U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES

Defendants

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Civil Action No. \_\_\_\_\_

### Declaration of Captain Carley A Gross, U.S. Air Force

**I, Captain Carley A Gross, do hereby declare as follows:**

1. I am over the age of 18 years, have personal knowledge of the matters set forth in this Declaration, and if called upon to testify to them, I would and could do so competently.
2. I am currently domiciled in Spokane, Spokane County, Washington.
3. I am a KC-135R/T Pilot and Flight Commander in the United States Air Force currently serving at the 93<sup>rd</sup> Air Refueling Squadron, 92<sup>nd</sup> Air Refueling Wing, at Fairchild Air Force Base (AFB), Spokane, WA. I do not have a pending assignment.
4. I graduated and commissioned as a 2<sup>nd</sup> Lieutenant from the United States Air Force Academy in May 2014 with a Bachelor of Science degree in Behavioral Science – Human Factors and with a Russian minor. After graduation and commissioning in 2014, I entered Undergraduate Pilot Training at Laughlin AFB in Del Rio, Texas. I graduated from pilot training in the summer of 2016. I earned a Special Operations assignment to fly MQ-9 Reapers at Cannon AFB, NM. I completed Initial Qualification Training at Holloman AFB in Alamogordo, NM from summer 2016-March 2017. In March 2017, I moved to Cannon AFB in Clovis, NM, where I flew for three years as an Aircraft Commander with multiple tactical engagements while simultaneously gaining thousands of critical hours of intelligence, surveillance, and reconnaissance data. I also executed the duties of Plans Officer and Scheduling Officer, ensuring training objectives and currencies were met while flying 365/24/7 global combat operations. I earned Pilot of the Quarter during my time at Cannon AFB and left Cannon AFB with over 1600 combat flight hours. During this time, I also accomplished my Masters of Science degree in Management with a focus on Organizational Leadership and Change from Colorado Technical University.
5. In January 2020, I changed commands from Air Force Special Operations Command to Air Education & Training Command, learning how to fly the KC-135R/T

Stratotanker at Altus AFB, Oklahoma. After six months of initial qualification training, I changed duty stations to Air Mobility Command to fly the KC-135R/T at Fairchild AFB in Washington. Since arriving in Spokane, I have flown around the world throughout European Command, Central Command, Southern Command, Northern Command, and Pacific Command. I supported Operation NOBLE EAGLE, piloted Coronets over the Pacific, and executed counterdrug interdiction efforts in the Southern Caribbean. To this day, I have nearly 900 total flight hours and just under 600 primary flight hours in the KC135R/T.

6. In addition to flying, I am also a sponsored Nutrishop athlete and a world class athlete. I ran NCAA Division I cross country and track and field at U.S. Air Force Academy. I also competed in collegiate Olympic distance triathlons at the U.S. Air Force Academy, successfully competing at three USA Triathlon Collegiate Club National Championships and earning All-American status twice. After graduation and commissioning, I earned a slot on the Air Force Triathlon team in 2014 and raced at the 2014 Armed Forces National Triathlon Championships. Entering pilot training, I took time off to focus on developing my flying knowledge and skills in addition to accomplishing my Master's Degree, but I quickly returned to racing while stationed at Cannon AFB. In October 2019, I raced at Ironman 70.3 Waco, qualifying for the 2020 Ironman 70.3 World Championships, which was ultimately delayed until 2022 due to COVID-19. I have many top three finishes in my age group and female overall in cycling, running, and triathlon. I qualified in May 2021 for the 2021 Ironman 70.3 World Championships. Though I could not attend because I was deployed at the time, I continue to train for this year's Ironman 70.3 World Championships in October as well as race at multiple other Ironman 70.3's. I

am also beginning an application for a position at the 2022 Armed Forces National Triathlon Championships on the Air Force Triathlon Team.

7. In summary, I was stationed at Laughlin AFB for Undergraduate Pilot Training for two years, Holloman AFB for MQ-9 Initial Qualification Training for nearly 7 months, at Cannon AFB flying MQ-9 Reapers as an Aircraft Commander for 3 years, at Altus AFB for KC135R/T Initial Qualification Training for 6 months, and at Fairchild AFB from July 2020 until now. I deployed to Central Command and European Command in the summer of 2021. During deployment, I flew in combat for 4 months out of Al Udeid Air Base, Qatar and Incirlik Air Base, Turkey while supporting Operation RESOLUTE SUPPORT, Operation INHERENT RESOLVE, and Operation ALLIES REFUGE, the first ever Noncombatant Evacuation Order from Afghanistan. Since arriving at Fairchild AFB I have received multiple accolades: 2020 Squadron Company Grade Officer (CGO) of the Quarter Award, 2021 Squadron CGO of the Quarter Award, 2021 Squadron Flight Commander of the Quarter Award, 2021 Squadron Flight Commander of the Year Award, 2021 Group Flight Commander of the Quarter, and 2022 Squadron Flight Commander of the Quarter.

8. Since recruit training, I have now served honorably for 8 years, and I will continue to do so God willing. Throughout my career, I flew MQ-9 combat operations in Iraq, Syria, Afghanistan, and three other countries (to remain unnamed), and I flew KC135R/T combat operations in Afghanistan, Iraq, and Syria.

9. I submitted a Religious Accommodation (RA) request in response to the COVID shot mandate. I was ordered by my commander on multiple occasions to report to the 39<sup>th</sup> Air Base Wing (ABW) Medical Group (MDG) for COVID-19 testing and subsequently the COVID-19 vaccination while deployed, leading up to the shot mandate. Each time, I



complied with testing, unaware of the risks of testing with unapproved FDA products and not having been given informed consent of the EUA status of those tests. It was during deployment that the mandatory COVID-19 vaccination order came down from the Secretary of Defense on 23 August 2021. My commander informed us that if we did not receive the shot, we would need to either be redeployed back home to begin administrative separation or submit a Religious Accommodation Request (RAR). So, I reached out to Fairchild AFB's MDG during my deployment to inquire about a medical exemption while simultaneously beginning to draft my religious accommodation request. One of the flight medicine doctors denied my request for medical exemption on the basis that my case does not fit the criteria as set forth by the CDC. I disagreed largely due to my extensive women's health history, felt I had been unfairly evaluated because I was not physically present in the office or in the United States, and informed the doctors that individual people do not fit into certain criteria boxes as we are all unique and all have different situations. The doctors at Fairchild did not agree but disinclined to comment further. I did not have the time or resources to chase down a second opinion while I was half way across the world from home station. Therefore, I submitted a Religious Accommodation Request (RAR) in response to the COVID shot mandate during my deployment on 21 September 2021 under the threat of being sent home early from deployment and grounded from flying. To this day, I still have received no word of my original RA document and its status.

10. Additionally, I possess natural immunity. I acquired COVID-19 in August 2020 as documented by Fairchild AFB Medical Group. I had the rare case of "long haul" COVID-19 which, while it did not affect work or flying, it did greatly affect my triathlon training regimen. Prior to deploying, I chased down multiple doctors visits to determine the cause

and diagnosis of what I was encountering with regards to intense chest pressure and what felt like a 10-year old constantly sitting on my chest. I also noticed my heart rate was on average 10 beats higher than normal regardless of if I was sitting, walking, running, biking, etc. I had seen the flight doctors on base with no resolution. I was referred off base to sports medicine doctors, cardiologists, and pulmonologists, all of whom could not diagnose what was happening in my body. As a last measure of prognosis, I tested for antibodies on 14 June 2021, on the morning of my deployment at an off base facility prior to reporting for departure. Even 10 months after initially catching the virus, I was still positive for antibodies. On top of that, I also tested positive for T Cell immunity in December 2021 after deployment, 16 months after initial infection. Both the positive antibody and positive T cell test are indicative of natural immunity.

11. I have tried to explain via email in November 2021 to my commander that the inability to change duty stations (PCS or Permanent Change of Station), as implemented in October 2021, for unvaccinated personnel as far as training and assignment decision is illegal per our own regulations. I have also emailed my commander again, in December 2021, on the fact that the weekly mandatory testing (started in December 2021) for unvaccinated military members on our base (but not the vaccinated members) is discriminatory at best and is illegal as none of the testing mechanisms are FDA-approved. Additionally, submitting to test in front of a squadron readiness civilian employee rather than an official medical technician was inappropriate and unprofessional as other squadron airmen are in the same office watching the testing happening. I informed him that under duress and threat of punitive paperwork, job loss, and career promotion loss, I would submit to weekly testing, but that otherwise, it was illegal and discriminatory, especially

for an organization that preaches diversity, equity, and inclusion. Both emails received no response. To date, I have had to test over 15 times from deployment, OCONUS travel, and weekly testing in the workplace.

12. Most recently, my commander hinted in a one on one conversation that he would prematurely have me start the Transition Assistance Programs if my initial Religious Accommodation Request (RAR) comes back denied, even though there would be no answer on the subsequent Appeal that I intend on filing. He also mentioned that if I deny to get the shot after my initial RAR comes back denied, I would be receiving a Letter of Reprimand (LOR), at a minimum, for failing to obey an order. If I receive an LOR as an officer, this negative paperwork is deemed so punitive in measure that it makes me ineligible for Permanent Change of Station orders, ineligible for promotion boards, ineligible for Professional Military Education boards, ineligible for career level schools, ineligible for deployments, and ineligible for all other normal career progressions, including retirement. This is especially important as the boards for promoting to the rank of Major are coming up next year for me. Furthermore, I am facing the reality of receiving less than an Honorable discharge for my service, losing my eligibility for VA benefits, and losing my post-9/11 GI Bill benefits as a result of this mandate. If I do not have the post-9/11 GI Bill, I cannot receive financial help to acquire my Restricted (or Full) Airline Transport Pilot Certification, a mandatory and very expensive certification process to fly for the airlines under FAA rules.

13. I am currently waiting the denial of my Religious Accommodation. I will appeal, then wait for charges shortly after.

14. My vaccination status did not prevent and has not prevented me from continuing to execute the mission of the Air Force. During the pandemic, I completed multiple temporary

duty assignments and flew across the country for training, conferences, and other tasks. I entered into the KC-135 community during the pandemic, and I piloted over 800 flight hours, 50 combat flights, and traveled all over the world, all while unvaccinated.

I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Executed this day, March 24, 2022.

A handwritten signature in black ink, appearing to read "Carley A. Gross". The signature is fluid and cursive, with the first name "Carley" being more prominent than the last name "Gross".

Carley A. Gross, Capt, USAF  
KC-135 R/T Pilot  
Flight Commander